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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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October 19, 1999

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-B-204
Washington, DC 20554

Re: Application of Bell Atlantic Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-region, InterLATA Services in New York, CC Docket No. 99-295

Dear Ms. Salas:

Enclosed herewith are the comments of MCI WorldCom, Inc. on the above-captioned 271 application of Bell Atlantic-New York.

Pursuant to this Commission's order, MCI WorldCom is filing a confidential portion of its submission and a redacted version of its entire submission. Inquiries regarding access to the confidential information by other participants in this proceeding (subject to the terms of the applicable protective order) should be addressed to: Elena Broder-Feldman, Jenner & Block, 601 13th Street, NW, Suite 1200, Washington, DC 20005, (202) 637-6310.

Sincerely,

Mark S

Mark D. Schneider

Enclosure

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by New York Telephone	)	
Company (d/b/a Bell Atlantic -	)	
New York), Bell Atlantic	)	Docket No. 99-295
Communications, Inc., NYNEX Long	)	
Distance Company, and Bell Atlantic	)	
Global Networks, Inc., for	)	
Authorization To Provide In-Region,	)	
InterLATA Services in New York	)	

COMMENTS OF MCI WORLDCOM, INC., ON THE APPLICATION BY BELL ATLANTIC - NEW YORK FOR AUTHORIZATION TO PROVIDE IN-REGION, INTERLATA SERVICES IN NEW YORK

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October 19, 1999

TABLE OF CONTENTS

Page

INTRODUCTION AND SUMMARY 1

I. BA-NY SHOULD TAKE ADDITIONAL STEPS SO MCI WORLDCOM CAN COMPETE ADEQUATELY IN NEW YORK. 5

A. The Need for Adequate Flow-Through Order Processing. 9

B. BA-NY Should Follow Appropriate Change Management Practices. 19

C. BA-NY's Pre-Order Interface Is Inadequate. 25

D. BA-NY Should Provide Advanced Services Loops. 31

E. BA-NY's Performance Remedies. 36

II. THE PUBLIC INTEREST TEST. 43

A. The State of Local Competition. 43

B. The State of the Long-Distance Market 47

CONCLUSION 48

MCI WORLDCOM, INC. COMMENTS

APPENDIX
TABLE OF CONTENTS

Declarations

TAB	DESCRIPTION	
	DECLARANT	**SUBJECT**
	VOLUME I	
A	Sherry Lichtenberg and John Sivori	Operations Support Systems
	VOLUME II	
B	Annette Guariglia	DSL-based Services
C	George S. Ford and John D. Jackson	Performance Measurements
D	Karen A. Kinard	Performance Measurements
E	John G. Donoghue and Ronald J. McMurtrie	Competitive Requirements
F	Robert A. Mercer	Public Interest
G	T. Randolph Beard and John W. Mayo	Public Interest

INTRODUCTION AND SUMMARY

The best evidence that a telecommunications market is irreversibly open to competition comes from the experience of actual competitors in that market, as the Federal Communications Commission ("Commission") has repeatedly emphasized. MCI WORLDCOM, Inc. ("MCI WorldCom") is one of Bell Atlantic-New York's ("BA-NY") largest competitors in New York. Its experience therefore is highly relevant to the Commission's consideration of BA-NY's application to provide in-region long-distance telephone service in the New York market. That experience shows that BA-NY for the most part provides reasonably effective service to MCI WorldCom, enabling it to serve both business and residential customers in New York. However, MCI WorldCom's progress is limited by five failures relating to BA-NY's operations support systems, the terms and conditions for leasing loops over which competitors can provide advanced services, and BA-NY's proposed performance remedies.

At the insistence of the New York State Public Service Commission ("NYPSC"), BA-NY has done much to open its local markets, and the proof is that a significant and growing number of New York residential and business customers for the first time have a choice of local carriers. MCI WorldCom serves New York's residential market principally through the "platform" of network elements leased from BA-NY, and serves business customers principally through MCI WorldCom's own facilities, which are interconnected to the BA-NY network. On the business side, MCI WorldCom has ****REDACTED**** switches, collocations in ****REDACTED**** central offices, and fiber serving over ****REDACTED**** customers, primarily within LATA 132. MCI WorldCom is pleased to report that it has sold over ****REDACTED**** lines for

INTRODUCTION AND SUMMARY

The best evidence that a telecommunications market is irreversibly open to competition comes from the experience of actual competitors in that market, as the Federal Communications Commission ("Commission") has repeatedly emphasized. MCI WORLDCOM, Inc. ("MCI WorldCom") is one of Bell Atlantic-New York's ("BA-NY") largest competitors in New York. Its experience therefore is highly relevant to the Commission's consideration of BA-NY's application to provide in-region long-distance telephone service in the New York market. That experience shows that BA-NY for the most part provides reasonably effective service to MCI WorldCom, enabling it to serve both business and residential customers in New York. However, MCI WorldCom's progress is limited by five failures relating to BA-NY's operations support systems, the terms and conditions for leasing loops over which competitors can provide advanced services, and BA-NY's proposed performance remedies.

At the insistence of the New York State Public Service Commission ("NYPSC"), BA-NY has done much to open its local markets, and the proof is that a significant and growing number of New York residential and business customers for the first time have a choice of local carriers. MCI WorldCom serves New York's residential market principally through the "platform" of network elements leased from BA-NY, and serves business customers principally through MCI WorldCom's own facilities, which are interconnected to the BA-NY network. On the business side, MCI WorldCom has ****REDACTED**** switches, collocations in ****REDACTED**** central offices, and fiber serving over ****REDACTED**** customers, primarily within LATA 132. MCI WorldCom is pleased to report that it has sold over ****REDACTED**** lines for residential customers throughout the State, saving New Yorkers over ****REDACTED**** so far this year.[1/]

Although MCI WorldCom has not advertised its service, already over ****REDACTED**** customers have learned of that service by word of mouth and have called MCI WorldCom requesting service. But conditions in New York today make it difficult for MCI WorldCom to offer service fast enough to meet the demand.[2/] MCI WorldCom's inability to compete in a way that fully captures the evident demand for its products is largely the result of remaining barriers to entry that should be addressed if local competition is to flourish in New York.

The substantial competition-affecting problems that remain are few, and could be quickly remedied. Indeed, most of them are already in the process of being resolved. But until these problems are addressed, MCI WorldCom will not be able to compete in New York at sustainable commercial volumes. In short, BA-NY should take the last steps to assure that the promise of the 1996 Act is finally fulfilled in New York.

In these Comments, MCI WorldCom shares its experience in New York. That experience shows that pure facilities-based competition is often possible in New York for medium and large business customers in the concentrated urban area of LATA 132. Elsewhere in the state, and for mass market residential and small business competition throughout the state, competitors remain dependent on BA-NY facilities. Competition using BOC facilities can open local markets, but only if three preconditions are present: First, there must be robust and scalable processes in

---

1/ See Joint Declaration of John G. Donoghue and Ronald J. McMurtrie ¶¶ 6-8 ("Donoghue & McMurtrie Decl."), appended as Tab E to these Comments.

2/ Id. ¶ 7.

place that enable competitors reliably to make use of those leased facilities. Second, competition using leased elements will develop fully only if the prices for those elements are cost-based. Finally, competition will be irreversible only with regulatory oversight and if a system of performance standards, measurements and remedies is in place that will adequately counteract the natural incentive of a Bell Operating Company ("BOC") to backslide and harm its competitors once it has won in-region interLATA entry.

In Part I of its Comments, MCI WorldCom demonstrates that, for all that it has accomplished, BA-NY needs to take five additional steps before MCI WorldCom can compete in New York with a reasonable prospect of commercial sustainability.

First, BA-NY's ordering Operations Support Systems ("OSS") require too much manual processing. Scalable OSS requires that the great majority of orders must flow through BA-NY's electronic systems without manual intervention. Otherwise, as the volume of orders increases, manual orders inevitably will overwhelm the staff assigned to process them, resulting in anticompetitive delays and high error rates.

Second, BA-NY has not so far been able to translate into practice the paper commitments it has made to Competitive Local Exchange Carrier ("CLECs") concerning change management for its OSS. It has not shown that it can provide timely notice and adequate documentation for new releases. Neither has BA-NY shown a willingness to consider CLEC input on suggested changes or the timing of new releases. MCI WorldCom also continues to be surprised by frequent unreported and unexplained systems outages. In addition, BA-NY has not yet demonstrated that it can provide the facilities and processes necessary for rigorous carrier-to-carrier testing of new releases.

Third, MCI WorldCom still does not have an adequate application-to-application pre-ordering interface that can be integrated with its ordering interface. Without this interface, MCI WorldCom is not able to interact efficiently with its potential new customers, and must undertake unnecessary manual efforts that inevitably result in errors and delay in provisioning new orders.

Fourth, BA-NY does not provide nondiscriminatory access to unbundled loops for advanced services. BA-NY has imposed high and unjustified, non-cost-based, non-recurring charges on competitors who wish to make use of digital subscriber line ("DSL") technology. In other respects as well, BA-NY deters competitors from making use of this powerful and forward-looking technology.

Finally, BA-NY's performance remedy plan is inadequate to give it sufficient incentive to continue to provide nondiscriminatory access to CLECs after BA-NY obtains section 271 authority in New York.

These problems can and should be addressed promptly. BA-NY has committed to address most of them. The NYPSC is currently reviewing the performance plans and the pricing for DSL loops. If these issues are fairly addressed, MCI WorldCom will have the opportunity to compete in New York on a commercially sustainable basis.

Part II describes the conditions that MCI WorldCom believes need to be present in New York to justify in-region long-distance entry. In New York, the "platform" is available at a cost that allows competitors to use it and with OSS that will work (once the problems discussed above are addressed). Additionally, CLECs have built their own facilities, particularly in LATA 132, demonstrating reasonable feasibility of entry to serve some large and medium business customers in these areas. And the number of collocations constructed throughout the state suggest that CLECs believe they can use their own switches to serve customers throughout the state. At the same time, credible third-party testing provides some comfort that OSS systems will function as promised, and the NYPSC has a proven track record opening the local market in New York to competition.

I. BA-NY SHOULD TAKE ADDITIONAL STEPS SO MCI WORLDCOM CAN COMPETE ADEQUATELY IN NEW YORK.

Section 271 of the Communications Act is designed to ensure that "BOCs have taken real, significant, and irreversible steps to open their markets" to local competition before they are permitted to enter the long-distance market in their own regions. MI Order ¶ 18;[3] see also DOJ LA I Eval. at iii, 1-2;[4] DOJ LA II Eval. at 1.[5] Thus, to gain entry into the interLATA market in New York, BA-NY must prove that it has "fully implemented" all fourteen items of the competitive checklist set forth in section 271(c)(2)(B) of the Act. MI Order ¶ 105; see also LA II Order ¶ 50 (noncompliance with a single checklist item is sufficient to deny an application).[6]

3/ In re Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, Memorandum Opinion and Order, 12 F.C.C.R. 20543 (1997) (hereinafter "MI Order").

4/ Evaluation of the United States Dept. of Justice, In re Application of BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 97-231 (filed Dec. 10, 1997) (hereinafter "DOJ LA I Eval.").

5/ Evaluation of the United States Dept. of Justice, In re Application of BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121 (filed Aug. 19, 1998) (hereinafter "DOJ LA II Eval.").

6/ In re Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long-distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121, Memorandum Opinion and Order, 13 F.C.C.R. 20599 (1998) (hereinafter "LA II Order").

Both this Commission and the Department of Justice have recognized that the statutory requirement that a BOC "provide" access and interconnection, 47 U.S.C. § 271(c)(2)(A), means not only that a BOC must make each item legally available, on paper, but also that it must make each item practically available -- that the BOC must demonstrate that it is ready to furnish the item in quantities that competitors may reasonably demand, and at an acceptable level of quality. LA I Order ¶ 54[7/]; SC Order ¶¶ 78, 81;[8/] MI Order ¶¶ 107, 110; see also DOJ SC Eval. at 13 (each checklist item must "be genuinely available");[9/] id. at 16 (BOC must demonstrate practical ability to provide UNEs with "satisfactory performance in commercial quantities"); DOJ Okla. Eval. at 75-76 (interconnection and access must be practically available in adequate quantities, and through automated systems that permit efficient ordering, installation, and billing).[10/]

To judge whether these standards are met, and to ensure that the conditions BA-NY has put into place to win section 271 approval do not deteriorate once it is allowed to compete in

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7/ In re Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana, CC Docket No. 97-231, Memorandum Opinion and Order, 13 F.C.C.R. 6245 (1998) (hereinafter "LA I Order").

8/ In re Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, Memorandum Opinion and Order, 13 F.C.C.R. 539 (1997) (hereinafter "SC Order").

9/ Evaluation of the United States Dept. of Justice, In re Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long-distance, Inc. for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208 (filed Nov. 4, 1997) (hereinafter "DOJ SC Eval.").

10/ Evaluation of the United States Dept. of Justice, In re Application of SBC Communications, Inc., et al. to Provide In-Region, InterLATA Services in the State of Oklahoma, CC Docket No. 97-121 (filed May 21, 1997) (hereinafter "DOJ Okla. Eval.").

long-distance, there must be adequate standards of performance, preferably enforceable through liquidated damages clauses. MI Order ¶ 22 (BOC must not only prove compliance with Act's requirements at time of application, but also that it can be relied on to remain in compliance). See also id. ¶¶ 204-206, 209; DOJ LA I Eval. at 31.

BA-NY has the burden of proving by a preponderance of the evidence that all of these criteria are satisfied as to each checklist item. LA II Order ¶¶ 51-59; SC Order ¶¶ 37, 57; MI Order ¶ 45. Critically, "paper promises" of future compliance are not enough. BA-NY has the burden of submitting evidence that proves it has the practical ability to satisfy those checklist items requested by CLECs. DOJ SC Eval. at 16 & n.28; LA II Order ¶¶ 51-59.

MCI WorldCom agrees that in fully complying with checklist obligations, "absolute-perfection" is not required. MI Order ¶ 278. Instead, the systems have to work well enough to permit CLECs to compete effectively for all classes of customers. A BOC has complied with the requirement that it fully implement a checklist item when competitors who need that item in order to compete are not, as a practical matter, impeded by the BOC. Such an analysis by its nature must be contextual. Imperfections that in one set of circumstances might have competitive consequences in another might not. As this Commission has held, the BOC's obligation is to furnish "the checklist item in the quantities that competitors may reasonably demand and an at acceptable level of quality." LA II Order ¶ 54. As the "reasonably foreseeable demand" (MI Order ¶ 110) for a checklist item might well vary from state to state depending upon the nature of the competitive arrangements in the state, so too the systems that are required to "fully implement" a particular checklist item might vary as well.

As a general matter, BA-NY claims not only to provide each checklist item in a manner sufficient to meet current demand and exceed current performance metrics, but also to be prepared to meet all future demand. See, e.g., Application by BA-NY for Authorization to Provide In-Region, InterLATA Services in New York at 10 ("BA-NY Br."). It also frequently asserts that it provides a particular checklist item more efficiently to its competitors than it does even to its own comparable retail operation, and backs up many of these assertions with evidence of actual commercial performance, supported by rigorous third-party testing. See, e.g., id. at 12 (trunk provisioning); id. at 16 (installation of unbundled loops). As to many of these claims, MCI WorldCom has no experience with which to contradict BA-NY's prima facie case.[11/]

As to other BA-NY claims, MCI WorldCom does have relevant experience. What that experience shows is that while BA-NY's practices often leave much to be desired and are far from perfect, in most instances today BA-NY is not stopping MCI WorldCom from offering local service to New York's business and residential customers. This application for that reason is very different from the previous section 271 applications filed by BOCs that have kept their local markets tightly shut. Indeed, New York's relatively open local market today is unique, even as compared to the local markets in other states within BA's territory.

At the same time, for all that it has accomplished, BA-NY has failed to satisfy five critical business requirements, which MCI WorldCom addresses seriatim:

11/ Neither does MCI WorldCom contest that BA-NY may properly proceed under sections 271(c)(1)(A) involving "Track A," and 271(d)(3)(B) involving section 272.

A. The Need for Adequate Flow-Through Order Processing.

1. Low Flow-Through Rates Are Inadequate. One of the most fundamental OSS business requirements is that a CLEC's orders must "flow through," that is, be "transmitted electronically through the gateway and accepted into [the BOC's] back office ordering systems without manual intervention." LA II Order ¶ 107. The Commission has found "a direct correlation between the evidence of order flow-through and the BOC's ability to provide competing carriers with nondiscriminatory access to the BOC's OSS functions." Id. This is so because flow-through rates directly affect the speed and efficiency with which CLEC orders and status notices are processed. See MI Order ¶ 196 ("[I]t is virtually impossible for orders that are processed manually to be completed in the same time as orders that flow through electronically."); LA II Order ¶ 108 (noting link between order flow-through and, inter alia, a BOC's "failure to provision orders in a timely manner" and "failure to provide order status notices electronically").

A BOC must process orders with an "equivalent level of mechanized processing" that exists for the BOC's retail customers. SC Order ¶ 105. If a BOC is unable to show that the flow-through rates for CLEC orders submitted electronically are "substantially the same as" the flow-through rates for the BOC's retail orders, then the BOC has failed to achieve parity. LA II Order ¶ 116; see also id. ¶ 109 (stating that a substantial disparity in flow-through rates "on its face" shows a lack of parity).

Because BOCs enjoy high flow-through rates at retail, the parity standard generally requires flow-through rates in excess of 95% for residential orders, and more than 80% for business orders. See SC Order ¶ 104 (finding BOC retail flow-through of 97% for residential orders and 81% for business orders, and stating that CLECs should have equivalent access); LA II Order ¶ 109 (96% for residential orders; 82% for business orders). The Commission has specifically found that flow-through rates of 60% are not adequate. See MI Order ¶ 174 (39% of electronic resale orders processed manually).[12/]

Consistent with these obligations, BA-NY promised the NYPSC in its Pre-Filing Statement that it would provide "CLECs with the information necessary to format and process their electronic requests so that these requests flow through the interfaces, the transmission links, and into [BA-NY's] legacy systems as quickly and efficiently as possible." BA-NY Pre-Filing Statement at 30 (BA-NY App. C, Tab 403). In addition to providing a list of order types that it promised would flow-through, BA-NY also committed "to continue to modify its OSS systems to flow through all but the least frequently requested types of orders at rates which are at parity with the rates at which analogous orders provided by [BA-NY's] own retail operations flow through." Id. at 31.

Unfortunately, BA-NY is not currently meeting these flow-through requirements for its competitors. The flow-through rates for MCI WorldCom for electronic residential orders in May, June, July, and August were **REDACTED**,**REDACTED**,** REDACTED*, and

12/ BellSouth employed a different methodology for calculating flow-through rates in its second 271 application for Louisiana than had been used by BOCs previously. LA II Order ¶ 110 n.360. Specifically, BellSouth excluded rejected orders from the total number of orders from which the flow-through percentage is calculated, which should yield a higher percentage of flow-through. Id. BA-NY also excludes rejected orders from the calculation of flow-through rates.

****REDACTED**** respectively.[13/] Thus, despite showing some recent improvement, BA-NY is still dropping fully a third of MCI WorldCom's orders to manual handling. Moreover, the vast majority of MCI WorldCom's orders during these months were simple residential orders, not the sorts of complex orders that might reasonably require manual processing.[14/] Id. ¶ 104.

Recently, BA-NY has promised to correct the flow-through problem in large part by the end of the year. Id. ¶ 107. MCI WorldCom welcomes these commitments. Competing at full commercial volumes while significant percentages of its simple POTS orders are being processed manually injects commercial insecurity and is not sustainable in a fully competitive environment. See Donoghue & McMurtrie Decl. ¶ 13.

2. BA-NY, and Not the CLECs, Is Responsible for BA-NY's Inadequate Flow-Through Rates. BA-NY is responsible for the unacceptable level of manual processing. As its own affiants explain, when BA-NY sampled UNE-platform orders from August 23-26 (all CLECs), September 1-10 (all CLECs), and September 15-21 (MCI WorldCom orders only), the consistent

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13/ See Joint Declaration of Sherry Lichtenberg and John Sivori ("Lichtenberg & Sivori Decl."), appended as Tab A to these Comments, ¶ 104. BA-NY's flow-through rate for CLECs in the aggregate for these periods was 50.51%, 54.48%, 54.36%, and 59%. Id. ¶ 104 n.9. Although BA-NY does not report flow-through rates on a CLEC-specific basis, MCI WorldCom calculated BA-NY's order flow-through rate for MCI WorldCom using BA-NY's reported carrier-to-carrier data for MCI WorldCom as described in the declaration. Id.

14/ BA-NY's comparison of CLEC order flow through and its own retail order flow through, see BA-NY Joint Decl. Miller & Jordan ¶¶ 56-59 (BA-NY App. A, Vol. 2), shows only a correlation between CLEC and retail flow through of order types. It does not attempt to evaluate the different conditions under which these order types do or do not flow through. However, BA-NY flow-through rates are inadequate precisely because its systems cannot process orders under many different conditions, even if the order types themselves are designed to flow through (i.e. where orders involve company blocking, certain features, partial migrations, contractual arrangement, pending orders, and multiple listings). Id. ¶ 112.

result was that the leading cause of manual processing was the design of BA-NY's back-end systems. The results were as follows:

Dates	Number of Orders Handled Manually Sampled by BA-NY	Orders Handled Manually Because of BA-NY System Design	Orders Handled Manually Because of BA-NY System Error	Orders Handled Manually Because of CLEC Error
Aug. 23 - Aug. 26	486	57.61%	8.02%	34.36%
Sept. 1 - Sept. 10	349	65.90%	5.44%	28.65%
Sept. 14 - Sept. 21	**REDACTED**	**REDACTED**	**REDACTED**	**REDACTED**

BA-NY Joint Decl. Miller & Jordan ¶ 59 (BA-NY App. A, Vol. 2). Thus, of the orders being processed manually, 65.63%, 71.34%, and **REDACTED** were dropped to manual handling for reasons solely attributable to BA-NY, not CLEC error.[15/] Lichtenberg & Sivori Decl. ¶ 105.

The main orders that are dropping to manual due to the design of BA-NY's systems are orders involving Company Initiated Blocking, orders for Call Forwarding II, orders for the Ringmate feature, orders migrating less than all of a multi-line customer's lines, orders when a customer contract exists on the account, orders placed when a pending order already exists in BA-NY's system, and orders for accounts with more than one listing. Id. This lack of flow through is a system-design error that must be remedied if BA-NY is to provide flow-through processing for simple UNE-platform orders for basic POTS service at acceptable rates. In its Pre-Filing Statement, BA-NY specifically promised to flow through five of these order types

15/ In addition to the samples relied upon by BA-NY, the NYPSC Staff also conducted its own study, looking at approximately 3,850 error messages. BA-NY found that 13 error messages accounted for 88% of the orders that dropped to manual processing: 22% were attributable to BA-NY errors; 46% to BA-NY systems design; and 32% to CLEC errors. There is evidence, therefore, that BA-NY errors are responsible for even more of the dropped orders than BA-NY's suggests. See Lichtenberg & Sivori Decl. ¶ 105 n.10.

(i.e., customer/company initiated blocking, Call Forwarding II, Ringmate, partial migrations, and contractual agreements on accounts). BA-NY Pre-Filing Statement at 31 & Apps. 2, 3. BA-NY should carry through on its promises and take the steps necessary to make these orders flow through.

In an affidavit filed October 8, 1999, BA-NY committed to do just that, and agreed to modify its systems design to provide greater flow-through, including flowing through six of the seven order types that today are causing much of the problem. See Joint October Reply Affidavit of Stuart Miller, Sean J. Sullivan and Arthur Zanfini on Behalf of BA-NY (NYPSC Oct. 8, 1999). BA-NY has proposed a three-phase approach. BA-NY proposes for Phase I to provide flow-through for BA-NY retail blocking by October 30, 1999. Id. ¶ 12. The remaining orders are scheduled to flow through either by December or by June 2000.[16/] MCI WorldCom welcomes BA-NY's renewed efforts to provide adequate flow-through of order processing. It is important to its business that these improvements be accomplished.

Systems-design issues and processing errors are not, however, BA-NY's only contribution to the flow-through problem. Even for those orders dropping to manual due to CLEC errors, BA-NY bears significant responsibility. This is so because the two primary causes for CLEC errors are: (1) CLEC typographical errors in rekeying pre-ordering information from BA-NY's GUI into CLEC orders, which are the inevitable result of BA-NY's failure to provide a working EDI-based interface for pre-ordering, see BA-NY Joint Decl. Miller & Jordan ¶ 59

16/ For Phase II, BA-NY would address Call Forwarding II, Ringmate, partial migrations, and accounts with additional listings by December 18, 1999. Id. ¶ 13. For Phase III, BA-NY would make contract accounts flow through in the second quarter of 2000. Id. ¶ 14.

(citing errors in entering directory listings); and (2) BA-NY's failure to provide clear, accurate, and complete business rules for its interfaces, see id. (citing errors in formatting contact telephone numbers).

As to the first, this Commission has consistently recognized that the failure of a BOC to provide CLECs with fully automated processes will result in errors, and it has rejected the notion that CLECs are to blame for delays and errors occurring as the result of having to rekey pre-order information. SC Order ¶ 157; LA II Order ¶ 96. Such errors are the result of the fact that "competitors' access to [the BOC's] pre-ordering operations support systems is more conducive to errors than is the case for [the BOC's] retail operations." SC Order ¶ 157. This is precisely the case here.

As for BA-NY's inadequate business rules, BA-NY asserts that a significant number of orders are dropping to manual processing because the CLECs are not adhering to two BA-NY business rules: first, CLECs failing to enter the appropriate telephone number in the "local contact" field[17/]; and second, CLECs improperly populating the new billing telephone number field for new customers.[18/] However, MCI WorldCom is unable to locate either of these business rules in the documentation provided by BA-NY. It has asked BA-NY to provide a citation to its rules, so it can correct these errors, but BA-NY has so far declined to respond to this request. See Lichtenberg & Sivori Decl. ¶ 111. These appear, then, to be BA-NY documentation errors,

17/ See Lichtenberg & Sivori Decl. ¶ 111 (referring to Error Code IDV; CBR FID has invalid DA (local contact tel # formatted incorrectly)).

18/ See id. (citing Error Code FORM:EU TAG: DN (New BTN info invalid on new line)).

not CLEC errors, and BA-NY should work with the CLECs to provide the appropriate documentation.

3. The KPMG Report Did Not Address Real-World Flow-Through Rates. BA-NY's poor flow-through percentages are not contradicted by KPMG's test results. KPMG tested the capability of BA-NY's systems to process for the most part perfectly formatted orders (e.g., orders formatted to flow through whether or not the formatting rules actually appeared in BA-NY's interface documentation) for those order types that were designed for flow-through processing (e.g., orders without Ringmate) and under the specific conditions necessary for flow-through (e.g., accounts without blocking). Id. ¶ 113. MCI WorldCom does not contest that, under these circumstances, BA-NY could achieve a high flow-through percentage. The problem is that this flow-through percentage does not -- and was not intended to -- reflect the percentage of real-world CLEC orders that BA-NY is actually able to process on a fully automated, flow-through basis. The problems with BA-NY's systems are not problems the test was designed to capture.

4. Variability in MCI WorldCom Ordering Should Not Affect BA-NY's Ability to Process Orders and Return Timely Status Notices. The Commission should also reject BA-NY's implication that the task of processing MCI WorldCom UNE-platform orders and returning timely status notices has been made more difficult by variability in MCI WorldCom's ordering patterns. See BA-NY Miller & Jordan Decl. ¶¶ 45, 49.[19/] Variability in ordering volumes should

19/ MCI WorldCom has not held orders in order to "batch" them and test BA-NY's ordering processes; MCI WorldCom's normal ordering processes occur with the customers on the line. Lichtenberg & Sivori Decl. ¶ 118. It does place orders with BA-NY 24 hours per day/7 days per week, and order volumes do fluctuate, as a result of systems changes, breakdowns or customer not adversely affect BA-NY's ability to process orders. Variability is the rule, not the exception, in competitive markets where, for example, advertisements or promotions stimulate demand for short periods. So long as the orders that are being sent for processing are designed to flow through BA-NY's systems, even dramatic fluctuations in ordering patterns should not affect flow-through order processing. Lichtenberg & Sivori Decl. ¶ 115. Only if the volumes significantly exceeded the stated capacity of BA-NY's systems, which is most certainly not the case here,[20/] could variability in ordering patterns affect flow-through rates and, thereby, order processing performance. The Commission has already expressly rejected the argument that a BOC is entitled to notice from CLECs of "spikes" in ordering volumes, holding that a BOC "should be able to handle, without receiving advance notice from competing carriers, volumes of orders that fall within its stated capacity." MI Order ¶¶ 195, 198.

5. Inadequate Flow-Through Rates Prevent Sustainable Competition. BA-NY's poor flow-through rates cannot be excused because it has managed nevertheless to provision manually the relatively low volume of orders placed by CLECs today. Manual processing -- even if effective at low order volumes -- is not a viable substitute for fully automated order processing at parity with that enjoyed by BA-NY, because as order volumes increase to competitive levels,

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demand. Id. ¶ 119.

20/ In most cases, the ordering volumes that concern BA-NY are around **REDACTED** orders a day, and in only one case did the volume reach **REDACTED.** Lichtenberg & Sivori Decl. ¶ 117. These are well within reasonable ordering volumes. In order to begin to compete effectively against BA-NY in the local markets, MCI WorldCom alone will have to be able to send a minimum of **REDACTED** orders per day. Id.

BA-NY will not be able to compensate for its lack of flow-through with manual processing. Lichtenberg & Sivori Decl. ¶ 120.

The Commission made just this point in its Michigan Order. Ameritech contended that it could address its order processing problems by increasing its capacity to process ordering manually. The Commission rejected this argument, saying that "we do not believe that substantial and continued reliance on manual capacity as a long-term solution to the ordering and provisioning of resale services is consistent with the requirement that there be equivalent access." MI Order ¶ 196.

In fact, BA-NY's failure to provide proper flow-through for ordering is already having real-world consequences. First, manual processing means that it takes longer for MCI WorldCom to receive FOC and reject notices. As the Commission has stressed, "[t]imely return of a FOC notice is critical because it informs the competing carrier of the status of its order." LA II ¶ 120. And, "[t]imely delivery of order rejection notices directly affects a competing carrier's ability to service its customers, because such carriers are unable to correct errors and resubmit orders until they are notified of their rejection by [the BOC]." Id. ¶ 118. The permitted intervals for both FOCs and rejects are much greater for manually processed orders than flow-through orders: electronically processed FOCs and rejects must be returned in 2 hours; manual FOCs and rejects are allowed 24. Lichtenberg & Sivori Decl. ¶ 122.

Moreover, BA-NY has failed to meet even the longer intervals allowed for processing manual FOCs and reject notices. Id. ¶ 122-123. This is hardly surprising. The unacceptably high volume of orders falling to manual is already putting too much stress on BA-NY's manual processes. Under the Carrier-to-Carrier Guidelines in New York, BA-NY must return 95% of its manual FOCs within 24 hours. Id. ¶ 122. For May, June, and July, BA-NY fell well below that standard.[21] A similar standard exists for reject notices, and for these same months BA-NY's on-time percentages for MCI WorldCom rejects was deficient.[22] Although BA-NY was able to improve manual processing of status notices for MCI WorldCom in August in anticipation of the filing of its section 271 application, it still failed to meet the 95% on time standard.[23] These business arrangements are unacceptable.

The failure of BA-NY's automated systems affects the growth of MCI WorldCom's business. As a result of the flow-through problems, in conjunction with the absence of the EDI pre-ordering interface, and other problems discussed in these Comments, MCI WorldCom would be unable to sustain its competitive position in an open market in which there are other competitors and in which BA-NY would be seeking vigorously to win (and win back) customers. The volumes of orders that BA-NY would have to process in such an environment would quickly swamp its manual processes. Donoghue & McMurtrie Decl. ¶ 16. BA-NY may be able to hire

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21/ For May, June and July, BA met the interval only for **REDACTED**, **REDACTED**, and **REDACTED** for MCI WorldCom orders, respectively. Id. ¶ 122 (citing BA-NY Carrier-to-Carrier Reports, MCI Performance, Ordering - UNE POTS/Special Services, Order Confirmation Timeliness Metric OR-1-04 (% On Time LSRC < 10 Lines)).

22/ The percentages for the three months were **REDACTED**, **REDACTED**, and **REDACTED**. Id. ¶ 122 (citing Reject Timeliness Metric OR-2-04 (% On Time LSR Reject < 10 Lines)).

23/ BA-NY processed **REDACTED** of manual FOCs and **REDACTED** of manual reject notices within 24 hours. Id. ¶ 123. BA-NY showed less improvement for the CLECs overall, however. For CLECs in the aggregate, in August BA-NY processed only 87.7% of manual FOCs, and 82.9% of manual rejects, on time. Id. (citing CLEC Aggregate Performance, Ordering - UNE POTS/Special Services, Order Confirmation Timeliness Metric OR-1-04 (% On Time LSRC < 10 Lines) and Reject Timeliness Metric OR-2-04 (% On Time LSR Reject < 10 Lines)).

sufficient staff in the months before its federal section 271 application to process **REDACTED** orders per day and provision those orders within four days. But BA-NY has not proved that this fix will continue to work in a fully competitive environment. As BA-NY itself has acknowledged, this is a problem that must be corrected. See supra p. 13.

B. BA-NY Should Follow Appropriate Change Management Practices.

"The change management process governs all aspects of the CLEC/BA relationship. All changes to documentation, interfaces, business rules and other functions are subject to the time frames, tracking, logging and coding of the change management process." KPMG Final Report, at VII-3 (BA-NY App. C, Tab 916). BA-NY can inflict substantial costs on CLECs simply by making changes to its systems and interfaces without providing adequate and timely notice and documentation of the changes. Donoghue & McMurtrie Decl. ¶¶ 11-12. In its Pre-Filing Statement, BA-NY pledged to provide the technical support necessary to adhere to reasonable change management processes, including adequate notice and documentation, during the development and implementation of new systems. BA-NY Pre-Filing Statement at 30. If CLECs are to succeed as competitors in local markets, BA-NY must keep its pledge.

The rules for change management are set out in the TeleCom Industry Services Change Management Process (May 22, 1998), and subsequent supplements. BA-NY also has established a change control forum where representatives from BA-NY and CLECs meet regularly to discuss upcoming changes to systems and interfaces as well as change management procedures themselves.[24/] On paper, this is a reasonably adequate change management process.

24/ See BA-NY Miller & Jordan Decl. ¶¶ 98-100 (outlining rules for implementing major new releases and industry standard changes).

Unfortunately, BA-NY has not yet shown that it can comply with its own rules. This is not a new problem, although there are some new signs that BA-NY finally is trying to address it. There have been problems with BA-NY's change management for years.[25/] KPMG too is critical of many of these same change management practices.[26/] Examples in four areas will suffice:

1. Notice and Documentation. In its Final Report, KPMG expressed concern with BA-NY's ability to provide timely notice and documentation of system changes.[27/] KPMG was especially critical of BA-NY's failure to provide adequate documentation to CLECs, finding that "[d]ocumentation regarding proposed changes has not been provided to CLECs on a timely and consistent basis," and that "BA's compliance on Type 4 (BA initiated changes) did not

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25/ Lichtenberg & Sivori Decl. ¶ 127 (citing Aff. of R. Sampson on behalf of MCI, dated November 1997, ¶¶ 39-42, 45-54 (discussing change management problems associated with MCI WorldCom's ordering interface for resale) (BA-NY App. C, Tab 178); Supp. Aff. of R. Sampson on behalf of MCI, dated January 1998, ¶¶ 12-13, 15-16 (same) (BA-NY App. C, Tab 296)).

26/ See id. ¶ 128 (citing KPMG Exception Report 6). In Exception Report 6, KPMG identified a number of deficiencies, including problems with BA-NY's notice and tracking procedures. KPMG closed Exception 6, but has made clear that it is not satisfied with BA-NY's change management. July OSS Technical Conf. Tr. at 3498-99 (BA-NY App. C, Tab 885).

27/ Id. ¶ 129 (citing KPMG Final Report, at VII-3). KPMG gave BA-NY only qualified approval for meeting basic notice requirements because BA-NY had failed to provide timely notice for 4 of the 20 releases observed by KPMG from January to June 1999, KPMG Final Report, Table VII-1.9, at VII-10, and because BA-NY had in several instances adjusted its implementation schedules without notifying the CLECs, id., Table VII-1.8, R1-6, at VII-8.

consistently meet the established intervals."[28] KPMG concluded that the quality of BA-NY documentation never reached the level "required by a CLEC in a production environment."[29]

MCI WorldCom has suffered the business consequences of these poor practices. For example, the development of EDI for pre-ordering was slowed by BA-NY's failure to provide timely and adequate documentation, causing needless delays in the implementation of that necessary interface. Lichtenberg & Sivori Decl. ¶ 133. Despite BA-NY's claims that it has corrected these problems, BA-NY Joint Decl. Miller & Jordan ¶ 102, statistics show that BA-NY still is not providing timely notice or documentation. In August, BA-NY failed to satisfy the Carrier-to-Carrier Guidelines standard of 95% on-time performance for change management notice and documentation requirements.[30] While BA-NY's performance is improving, it has yet to establish a pattern of compliance with basic change management notice and documentation rules.

2. CLEC Input Into Systems Changes. BA-NY does not give the CLECs adequate opportunity to provide input on new releases. For example, until very recently, BA-NY initiated

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28/ KPMG Final Report, Table VII-1.8, R1-6, at VII-8. BA-NY provided timely documentation in only 3 of 19 instances from January to June 1999. Id., Table VII-1.9, at VII-10.

29/ Id. at II-8; see also KPMG Final Report, Table IV-1.9, P1-4, at IV-19 (finding that "Bell Atlantic's documentation was not sufficiently complete and accurate to allow KPMG to create successfully EDI order and pre-order transactions").

30/ BA-NY managed to provide timely notice for BA-NY initiated changes only 88% of the time. Moreover, BA-NY provided timely documentation for these changes only 75% of the time. Lichtenberg & Sivori Decl. ¶ 134 (citing BA-NY Carrier-to-Carrier Report for August, CLEC Aggregate Performance, Operation Support System/Billing, Change Notification Metric PO-4-01 (% Notices Sent on Time - BA Orig.) and Change Confirmation Metric PO-4-01 (% Notices Sent on Time - BA Orig.) (BA-NY App. A, Vol. 3, att. D, exh. D)).

changes were given priority over CLEC initiated changes as a matter of course. Under pressure from the NYPSC, a new procedure is now in place, pursuant to which a committee of BA-NY and CLEC representatives prioritize changes based on merit, not based on their sponsorship. But this procedure has not been in place long enough to evaluate. See Lichtenberg & Sivori Decl. ¶¶ 135-137.

Similarly, BA-NY does not give CLECs the opportunity to participate in the decision about when to make a systems change. For example, when BA-NY announced the release of a new pre-order function called "Live Wire," CLECs unanimously requested that BA-NY postpone the release because of concerns that the change would delay the CLECs' own OSS development. BA-NY refused, and Live Wire was implemented on BA-NY's schedule. As a result, MCI WorldCom's development of its EDI interface for pre-ordering was significantly set back. Id. ¶ 136.

Finally, in this regard, BA-NY does not adequately consider the impact of its planned system down time on CLECs. On several weekends recently, BA-NY has disabled critical pre-ordering and trouble administration functions. Id. ¶ 141. MCI WorldCom concentrates its telemarketing efforts on weekends, when people are at home. In addition, MCI WorldCom gets more repair and maintenance calls on weekends. BA-NY must consult more closely with CLECs on outages or provide alternatives for CLECs so they are not taken completely out of business. Id.

3. Treatment of Emergency Outages. BA-NY also has a poor track record handling unplanned or emergency outages. Id. ¶ 138. BA-NY fails to monitor its interfaces adequately so that it can provide immediate notice of outages and establish workaround procedures to keep

affected CLECs in business. Its August data shows that it provided timely notice of emergency changes only 70% of the time.[31] Although ordered to do so by the NYPSC, BA-NY has yet to provide data for the metric measuring the average amount of time it takes BA-NY to notify CLECs of an outage, once BA-NY becomes aware that its systems are down.[32]

In addition, BA-NY often fails to provide explanations for outages. Lichtenberg & Sivori Decl. ¶ 140. BA-NY must inform MCI WorldCom of the results of its evaluations because, without an explanation, MCI WorldCom cannot take any steps to see that the troubles are not repeated. Additionally, even if the problem lies solely on the BA-NY side of the interface, MCI WorldCom needs to be able to track and record the causes for these outages so that it can help BA-NY to identify and resolve recurring problems. This is particularly important today given the instability of the EDI interface for pre-ordering. Nonetheless, BA-NY has not yet provided an explanation for more than half of these outages. Id.

For the same reason, BA-NY must provide adequate help desk support for CLECs. KPMG found, however, that BA-NY does not provide a single, consistent procedure for obtaining assistance from its help desks and the result is "confusion and delay" for CLECs and their customers. See KPMG Exception Report 45 (BA-NY App. C, Tab 535). KPMG also found "significant deficiencies in the quality" of BA-NY's help desk documentation. KPMG Final Report, at IV-226. KPMG remains "not satisfied" because the documentation does not

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31/ BA-NY Carrier-to-Carrier Report for August, CLEC Aggregate Performance, Operation Support System/Billing, Change Notification Metric PO-4-01 (% Notices Sent on Time - Emergency Maint.) (BA-NY App. A, Vol. 3, att. D, exh. D).

32/ Id. at Average Notification of Interface Outage Metric PO-5-01 (Average Notice of Interface Outage).

adequately provide contact list and help desk numbers, thus requiring CLECs to call "multiple sources before resolution steps can be initiated." Id., Table IV-9.7, P9-16, at IV-220-21. KPMG concluded that "these errors resulted in significant delays" in interface development and in completing pre-ordering and ordering transactions. Id. at IV-226. MCI WorldCom's experience corroborates these failures. Id. ¶ 144. In addition, MCI WorldCom has found that BA-NY's help desk representatives often lack the necessary expertise to answer questions or respond to problems. Id.

4. BA-NY's Test Environment. Finally, BA-NY has not been able to operate a working testing environment for improvements to its OSS. As KPMG concluded, any company doing business with BA-NY "would need to have a sound testing process in which to make sure that they were able to update their technology in a predictable and rigorous fashion." July OSS Technical Conf. Tr. at 3474. BA-NY itself has acknowledged it is "necessary to perform carrier-to-carrier testing" and pledged "to engage in and provide full cooperation for such carrier-to-carrier testing." BA-NY Pre-Filing Statement at 32. Nevertheless, BA-NY has not yet demonstrated that it can conduct adequate carrier-to-carrier testing with CLECs.

During the third-party testing, KPMG evaluated BA-NY's Quality Assurance ("QA") testing environment and found that BA-NY's internal QA facilities "[did] not provide a carrier-to-carrier testing environment . . . that adequately resembles its production environment for pre-ordering and ordering." KPMG Exception Report 21, at 1. It concluded that the test environment created significant impediments to CLEC testing.[33/] Lichtenberg & Sivori Decl.

33/ MCI WorldCom's experiences in attempting to develop and test the EDI interface for pre-ordering confirm KPMG's assessment. MCI WorldCom attempted to conduct testing with

¶ 146. In response, BA-NY just recently implemented a new permanent testing environment. While KPMG notes that while BA-NY's permanent plan appears on paper to be an improvement, it expressed concern that it had no opportunity to test the environment and that "a track record of full implementation . . . has not been established."[34/] Neither has MCI WorldCom yet had the opportunity to complete a full cycle of testing, including moving the tested software into production. Id. ¶¶ 153-155.

C. BA-NY's Pre-Order Interface Is Inadequate.

1. The Importance of Pre-Ordering OSS. Pre-ordering is the process by which a CLEC gathers and verifies the information needed to place an order for local service. LA II Order ¶ 94. It is the first step in creating an order for local service, so any delays or errors made at the pre-ordering stage ripple through the process, causing delays and rejected orders down the line. It is also the first exposure that new customers have to the CLEC, which makes it all the more important that the process run smoothly. See Donoghue & McMurtrie Decl. ¶ 15. As the Commission has recognized, meeting customer expectations for speed, efficiency and accuracy is a critical element to achieving and sustaining a competitive position in the market. See LA II Order ¶ 105 (a CLEC should not "appear to be a less efficient and responsive service provider than its [ILEC] competitor").

BA-NY for its pre-ordering interface from November 1997 to March 1999, without success. After repeated requests for test bed data and a stable test environment in which to work, BA-NY finally suggested that MCI WorldCom abandon its QA environment altogether. MCI WorldCom agreed, and all MCI WorldCom pre-ordering testing from that time forward was conducted in a production environment. Id. ¶ 147.

34/ KPMG Final Report, Table VII 2.4, R2-7, at VII-26; see also id. at II-8; July OSS Technical Conf. Tr. at 3471-72.